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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/644,371	08/23/2000	George E. Smith	108298529US	1295

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EXAMINER

MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/27/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/644,371

Applicant(s)

SMITH, GEORGE E.

Examiner

Joseph C. Merek

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 8, 14-17, 20, 24, 25 and 27-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-13, 18, 19, 21-23 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

Claims 8, 14-17, 20, 24, 25, and 27-34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected non-elected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9. Applicant specified that claims 8, 20 and 27-34 were non-elected and thereof withdrawn. However, claims 14-17 are viewed as not reading on the elected species since the claimed structure is not shown in Fig. 3c that represents the elected embodiment. Claims 14-17 have been withdrawn as being drawn to the non-elected invention.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 7, 9, 12, 13, 18, 22, 23, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Nalle, Jr. (US 2,984,035). Regarding claims 1 and 18, the decoration 11 is between the layers and on both the interface and the bottom. The inner and outer layers are transparent. The background has an asymmetrical contour about the axis represented by the cut line for Fig. 3 seen in Fig. 2. Regarding claim 3, see Figs. 1-4, where the structure is shown. The background material is between the inner and outer layers. Regarding claim 4, the wall portion and the interface are joined and therefore integral which satisfies the claim language. Regarding claim 5, the protective layer is the inner layer of the container as seen in Figs. 2 and 3. Regarding claim 7, the background material is opaque. Regarding claim

9, the background covers at least part of the wall portion. Regarding claims 12 and 22, the background material covers at least approximately the entire base portion. Regarding claims 13 and 23, see Fig. 2. Regarding claim 26, see Fig. 1, where the lower portion is generally conical and the upper portion is generally cylindrical.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nalle, Jr. (US 2,984,035) in view of Hultgren (US 3,338,458). Regarding claim 2, Nalle, Jr. does not teach the paint layer for the background. Hultgren teaches a similar decorated container with a decoration between two layers where the decoration can be printed on the inner surface of the outer layer. It would have been obvious to employ the printed decoration of Hultgren in the container of Nalle, Jr. to provide an alternative way to form the decoration. It would have been obvious to employ ink since inks are used in printing. An ink layer satisfies the limitation of the paint layer. There is no structural difference between the two.

Claims 6, 10, 11, 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nalle, Jr. Regarding claims 6, 10, 11, 19, and 21, official notice is taken that it is well known to specified colors and or the single hue. It would have been

an obvious matter of design choice to provide a single hue or the specified colors to provide the decorative effect desired by the user.

Conclusion

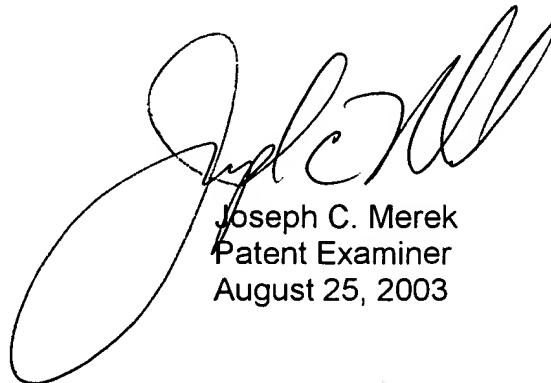
This action is a non-final action due to the new grounds of rejection of claim 18. Claim 18 is original.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Outerbridge, Hess, Sr., Spencer et al, Ferrari, Tuwiner, Shapcott, and Pennnaz are all cited for their structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Joseph C. Merek
Patent Examiner
August 25, 2003